

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 13, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman (arrived at 7:30)
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Town of Merton Board of Adjustment
Larry Redlin, BA03:074, petitioner
Todd Wozniak, BA03:070, petitioner
Bill Reich, BA03:046, petitioner
Lora Hovland-Reich, BA03:046, petitioner
Joanne Geise, BA03:072, neighbor
Joan Chelminiak, BA03:072, neighbor
Bill Groskopf, BA03:072, petitioner
William Fows, BA03:072, neighbor
Steve Sharpe, BA03:069, architect
Lee Wojoik, BA03:071, neighbor
Robert A. Nash, BA03:071, contractor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Ms. Voelker *I move we approve the Summary of the Meeting of July 9, 2003.*

The motion was seconded by Mr. Ward and carried unanimously.

NEW BUSINESS:

BA03:046 WILLIAM REICH & LORA HOVLAND-REICH

Ms. Voelker:

I make a motion to approve the roof to be razed above the garage to allow for storage and access should be obtained by a pull-down staircase or a ladder, as the petitioner stated. No outside entrance

to the second story of the garage and no entrance to the living quarters itself. I also believe that the petitioner should be allowed to build on the room over the existing sunroom. A structural engineer shall certify the stability of the addition and the statement shall be reviewed by Waukesha County Parks and Land Use staff. It will not affect the FAR; rather it would be a trade-off with the level below it, because the sunroom becomes an exposed basement. I want to deny the addition off of the existing office. Somehow, their architect is going to have to work on a design to put this all together. I believe it was stated on the southwest side, but I am recommending the petitioner be allowed to replace those windows on his existing office and put in a front entryway door to his residence utilizing that space. The addition above the garage must meet the requirements for what is considered a storage area above a garage. The reason why I am not requiring the removal of the boathouse is because the excessive land disturbance would make it more destructive to the channel of Okauchee Lake. The following are the conditions of approval:

- 1.) The County staff must be given structural reports, completed by a Structural Engineer, for approval to accommodate the addition.
- 2.) Building plans must be submitted and shall show the storage area and the electrical, dimensions, and heights.
- 3.) There must be erosion control methods taken into consideration for the addition above the sunroom, because equipment will somehow have to be approached unto this property and the erosion control methods will be up to the Waukesha County Department of Parks and Land Use staff.

Mr. Tarmann: I think the motion basically satisfies only the desires of the petitioner. In terms of upholding the spirit and intent of the Ordinance, it does nothing and it doesn't serve the public interest any. I don't think we're doing our job to approve this motion and I will vote against it.

Mr. Bartholomew: If the non-conforming deck down below were removed as part of the motion, would it make a change?

Ms. Voelker: I am adding a condition that the deck adjacent to the lake shall be removed.

Mr. Bartholomew added to the condition: A Landscape Architect shall submit a restoration plan and it should be reviewed and approved.

Mr. Schultz: I agree with Wally. The floor area ratio is way too high on this lot already and to build more on it is not productive. I don't have a problem with putting a roof over the garage because it meets the Ordinance for storage.

The motion was seconded by Mr. Bartholomew. The 2-2 vote was not passed. Mr. Tarmann and Mr. Schultz voted no. Mr. Ward abstained.

Mr. Tarmann:

I move to deny the request, in accordance, for the reasons set forth in the staff recommendation.

The motion was seconded by Mr. Schultz. The 2-2 vote was not passed. Ms. Voelker and Mr. Bartholomew voted no. Mr. Ward abstained.

Mr. Schultz:

I make a motion to allow a storage area to be built above the garage that would meet the Ordinance, no higher than 6 ft., basically taking a shed roof off and putting a gable roof on. The addition to the garage shall have no access to the house and shall be accessed by a pull-down staircase. It cannot be used for living area, only storage. I would allow a front door to be put in with a 20 sq. ft. stoop, but no porch. The rest of the house will have to remain as is.

Mr. Tarmann added: The motion, as approved, keeps with the spirit and intent of the Ordinance and keeps the property in more of a conformance.

Mr. Schultz: Yes, because the building would not be increasing, only storage space added. We would want the submittal of house plans, approved by staff, as a condition for approval and we feel the approval would be within the spirit and intent of the Ordinance. I would like the deck and the patio to be removed. They are new and the lot is so impervious that it should be brought back to grass. They have a deck above the boathouse that can be used, as well as a deck outside of the house.

The motion was seconded by Mr. Tarmann. The 2-2 vote was not passed. Ms. Voelker and Mr. Bartholomew voted no. Mr. Ward abstained.

Mr. Bartholomew:

I make a motion to allow the addition above the garage and the deck down below (adjacent to the lake) be taken off. The patio shall be left alone. A stoop could be allowed in front of the proposed entrance.

The conditions are as follows: The conditions for the addition above the garage shall be the same as those proposed by Ms. Voelker and Mr. Schultz. House plans need to be submitted as a condition. The lower deck must be removed.

Mr. Ward: You are not increasing the footprint, just providing some storage above the garage, which does not increase the floor area ratio, because the ceiling height would be less than regulation height. The stoop just provides for safe ingress and egress.

The motion was seconded by Ms. Voelker. The motion was passed with 4 yes votes. Mr. Ward abstained.

The staff's recommendation was for denial, for the following reasons:

The petitioners have failed to demonstrate that denial of this variance will result in an unnecessary hardship, which the Wisconsin Supreme Court has defined as a situation where, in the absence of a variance, no reasonable use can be made of the property at all. The petitioners currently have reasonable use with the existing 1,683 sq. ft. residence, 361 sq. ft. attached garage, and a 413 sq. ft. boathouse. There are no unique physical conditions existing on the property. In addition, the variance request would harm the public interest and affect the general public interest/welfare, not necessarily lack of local opposition. The property is very small in size and increasing the living area on this property, which is already significantly developed, reduces light and air adjacent to the road,

which not only negatively impacts the general attractiveness and character of the community environment and the general desirability of the neighborhood, but also inhibits safety and efficiency

of the road used by others. Also, further developing the property does not promote natural beauty of the shoreline, rather it promotes enlarging existing reasonably sized structures, which are located too close to the shoreline area, as they currently exist. To permit the petitioners the ability to further exceed the Ordinance requirements, when they have a reasonably sized residence currently, would not be in the best interest of the public. Therefore, granting the requested variance would not be in conformance with the purpose and intent of the Ordinance.

BA03:069 JAMES J. WEBBER, II

Ms. Voelker

I make a motion to adopt the staff's recommendation for approval, with the same conditions as stated in the Staff Report, for the reasons stated in the Staff Report. The decision shall clarify that a variance is not required for remodeling a non-conforming structure in excess of 50% of its fair market value and from the floodplain setback.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval of the special exceptions for offset and floodplain setback and denial of the variance from the floodplain setback, with the following conditions:

1. The proposed addition must not be located any closer to the established road right-of-way than 50 ft. and must not be located any closer to the east lot line than the existing residence, 9.8 ft., as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot line and road as the overhangs exceed two (2) ft. in width.
2. The proposed addition must not be located any closer to the 100-year floodplain than the existing residence, unless the petitioner provides evidence to the Waukesha County Planning and Zoning Division staff that the proposed addition meets the 100-year floodplain setback (A survey of the adjacent properties may be required to make this determination). The overhangs of the addition must not exceed two (2) ft. in width, facing the lake, or the addition must be the additional distance from the 100-year floodplain as the overhangs exceed two (2) ft. in width.
3. The shed shall either be relocated to a conforming location, with the issuance of a zoning permit, or it shall be removed upon occupancy of the proposed addition.
4. Prior to the issuance of a zoning permit, a complete set of elevation renderings for the proposed addition, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval. The height of the residence, including the second story addition, shall not exceed 35 ft. in height per the Ordinance definition.
5. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning

Division staff.

6. Prior to the issuance of a zoning permit, a stakeout plat-of-survey, showing the location of the existing residence, patio, all proposed additions, and any other appurtenances, including the relocation or removal of the shed, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval. **The survey must include the location of the 100-year floodplain.**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the recommended conditions, is a reasonable request, since the location of the existing residence is only slightly non-conforming to the road setback, offset, and possibly the 100-year floodplain setback and, as approved in this recommendation, the addition would not encroach on any of the setbacks further than the existing residence. The existing residence is modest in size and does not have a basement. The addition allows the petitioners an increase in floor area, while still maintaining a reasonably sized home that meets the floor area ratio and open space requirements. It would be very difficult for the petitioners to relocate their residence in a conforming location on the property without minimizing the size of the residence, which is not currently or proposed to be unreasonable for the size or shape of the lot. Therefore, the proposal with the recommended conditions is within the spirit and intent of the Ordinance.

BA03:070 TODD WOZNIAK

Mr. Tarmann

I make a motion to adopt the staff's recommendation for approval, with the same conditions as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Ms. Voelker and carried with 3 yes votes. Mr. Schultz and Mr. Ward abstained.

The staff's recommendation was for approval, with the following conditions:

- 1.) The proposed additions must not be located any closer to the wetland boundary than the existing residence, 48 ft., and the proposed deck must not be located any closer to the wetland boundary than the existing patio, 39 ft.
- 2.) Prior to the issuance of a zoning permit, a stakeout plat-of-survey, showing the location of the existing residence and all proposed additions, including decks, patios, and any other appurtenances, shall be prepared by a registered land surveyor and submitted to the Planning and Zoning Division Staff for review and approval.
- 3.) Prior to the issuance of a zoning permit, a complete set of building plans for the addition, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
- 4.) If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer, and submitted to the Planning and Zoning Division Staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of

the proposed additions do not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not to the neighboring properties or the road. The following information must be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the petitioner's request, with the recommended conditions, is a reasonable request, since the construction of the residence was approved by a variance and approved only 25 ft. from the conservancy boundary. The current proposal only requires a variance because the existing residence and proposal are non-conforming to the conservancy setback, which was previously allowed to provide the petitioner reasonable use of the property, however, the petitioner constructed the residence in a location far less non-conforming than originally approved. In addition, the petitioner was approved a 70 ft. x 70 ft., 4,900 sq. ft., building envelope, whereas the existing residence and the proposed additions, including the deck, make up a revised 4,167 sq. ft. building envelope, which is less intrusive on the wetland than the original approval in 1997. Therefore, since the proposal for additions outside the approved building envelope has less of an impact on the wetlands/conservancy area than the approved building envelope the proposal, with the recommended conditions, is within the spirit and intent of the Ordinance.

BA03:071 ROBERT A. NASH, SAWFISH CONTRACTING, LLC (Allan Miller-Owner)

Mr. Schultz

I make a motion to adopt the staff's recommendation for denial, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for denial for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship, that the property has unique physical conditions which prevent compliance, and that granting the requested variances would not be contrary to the public interest. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The petitioner received a variance in 2002, to raze the existing residence and construct a new residence in a significantly more conforming location, which is within the intent of the Ordinance. Allowing the existing residence to be significantly remodeled in an extremely non-conforming location is simply perpetuating the existence of non-conforming structures, when the purpose and intent of the Ordinance is to eliminate

non-conformity on a property to the greatest extent possible, which has been established as part of a past variance, therefore, the petitioner's proposal is not within the spirit and intent of the Ordinance.

BA03:074 LAWRENCE REDLIN

Mr. Tarmann

I make a motion to adopt the staff's recommendation for approval, with the following modifications to the conditions stated in the Staff Report, Condition No. 1: The petitioner shall be allowed 2,100 sq. ft. The attached garage shall be no less than 490 sq. ft., Condition No. 2: The building envelope shall be extended 10 ft. towards the road, to allow a maximum 10 ft. deck on the lakeside of the residence. The reasons for approval shall be the same reasons stated in the Staff Report.

Ms. Voelker added that all conditions, including the floodplain elevation, shall be revised to state the correct floodplain elevation, 792.4' amsl.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The proposal must contain a residence and an attached garage. The maximum square footage of all structures on the lot shall not exceed 1,800 sq. ft. (23%).
- 2.) The first floor of the structure, including the garage, must be at least 850 sq. ft., however, the footprint shall not exceed 26 ft. x 43.78 ft., 1,138.28 sq. ft., and shall be constructed within the building envelope provided on the attached map (See Exhibit "B").
- 3.) All existing structures on the property must be removed, prior to the construction of the new single-family residence and attached garage. If this is not possible, please contact the Waukesha County Department of Parks and Land Use staff to determine alternative procedures, which the staff will be able to authorize.
- 4.) The residence and attached garage must be located at least 40 ft. from the shoreline of the channel to Lower Phantom Lake, 10.95 ft. from the side lot lines, and 33.5 ft. from the established road right-of-way. The measurements shall be taken from the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot line, road, and lake as the overhangs exceed two (2) ft. in width.
- 5.) Any decks and/or patios and any other appurtenances must be located at least 40 ft. from the shoreline of the channel to Lower Phantom Lake, 6.57 ft. from the side lot lines, and 33.5 ft. from the established road right-of-way. Any decks and/or patios may extend beyond the approved building envelope on the east and west lot lines with a minimum 6.57 ft. offset. A 20 sq. ft. uncovered porch used for ingress/egress could be constructed on the roadside of the residence.
- 6.) The first floor of the structure shall be placed at or above the flood protection elevation (794.4 ft. above mean sea level). Fill shall be used to elevate the first floor, so as to meet the above. The fill shall not be less than one (1) foot below the flood protection elevation for the particular area and the fill shall extend at such elevation, at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved, because of lot lines or other similar constraints, said fill elevation shall extend as far as is practical, resulting in no slope

conditions at its terminus, which may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved, as set forth above, the structures shall be floodproofed to the flood protection elevation, in accordance with the methods set forth herein, and shall be certified as such by an architect or professional engineer registered in the State of Wisconsin. Other methods may be used, as long as they are certified, as set forth above, which are designed to the flood protection elevation for the particular area in question. All floodproofing measures shall, at a minimum, provide anchorage to resist floatation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate measures are taken, the applicant shall submit a plan or document certified, as above, that the floodproofing measures are adequately designed to protect the property to the flood protection elevation for the subject area.

- 7.) There shall be dry land access to the residential structure. Dry land access to be considered contiguous lands outside or above the floodplain elevation, where the depth and duration of floodwaters do not adversely affect rescue and relief operations during flood.

Note: The Wisconsin Administrative Code NR 116.13 (2) (d) indicates that if the existing road does not comply with the dry land access requirement (elevated above the 100-year flood elevation of 872.4 ft. (should be 792.4' amsl) above mean sea level), and compliance with that requirement is impractical, new development and substantial improvements may be permitted, only if one of the following occurs:

- a. The municipality has an adequate natural disaster plan, which has been concurred in by the division of emergency government and approved by the Department of Natural Resources; or
- b. The municipality has written assurance from the appropriate units of police, fire, and emergency services that rescue and relief can be provided by wheeled vehicles to the structures during regional flooding, taking into account the anticipated depth, duration, and velocity of the regional flood event in the area, thereby protecting human life and health and minimizing property damage and economic loss.

Since a portion of Lakeside Drive has an elevation below the 100-year flood elevation, the petitioner will be required to submit proof of compliance with one of the above-stated requirements, prior to the issuance of a zoning permit.

- 8.) The proposed residence must not have a level considered as a basement for floor area calculation purposes. If a crawlspace is proposed, it shall be located at or above the floodplain elevation (872.4 ft. above mean sea level) (should be 792.4' amsl).
- 9.) Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
- 10.) Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review

- 11.) Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and decks, patios, and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
- 12.) In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 11.
- 13.) Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Mukwonago Building Inspector and the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, the petitioner will enjoy a reasonable use of the property, in the form of a new single-family residence, consistent with sound floodplain management practices, with an attached garage and decks and/or patios, with the intent to eliminate any potential adverse affects on adjoining properties and the natural resources in the area. Due to the extremely non-conforming size of the lot, variances are required to allow any reasonably sized residence. As conditioned, the approval allows the petitioner minimal amount of relief from the Ordinance requirements to allow reasonable use of the property. The proposal, approved as conditioned, will remove an extremely non-conforming residence with a first floor below the 100-year floodplain elevation and only a few feet from the shoreline and allow a new modest sized residence, which meets the floodplain overlay district requirements. The approved footprint and building envelope location are restricted, because the entire lot is located in the floodplain and near the shoreline of a channel. Our Department is trying to preserve as much storage capacity for floodwaters and the natural beauty of the shoreline

area as much as possible on this small lot. The approved building envelope is slightly larger than the existing residence on the property, providing reasonable use of the property. Floodproofing the new residence and placing it in a significantly more conforming location will improve the public health, safety, and welfare of the petitioners and the property owners in the surrounding area. The approved structure still conforms to the general desirability of the neighborhood. Other lots in the area with small lot sizes have similar sized structures. Again, the approval, as conditioned, will allow the petitioners a reasonable use of their property, while minimizing the impacts to the surrounding neighborhood and natural resources to the greatest extent possible. Therefore, granting the requested

variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA03:072 WILLIAM GROSKOPF

Mr. Schultz

I make a motion to adopt the staff's recommendation for approval, with the same conditions as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) All existing structures on both lots must be removed, prior to the issuance of zoning permits for the construction of new residences.
- 2.) All proposed structures must be at least 10 ft. from the side lot line, 50 ft. from the established baseline of the road, 75 ft. from the shoreline and 100-year floodplain, and shall not exceed 15% floor area ratio. A minimum of 10,000 sq. ft. of open space is required. No additional variances will be approved on the subject properties.
- 3.) The variance (BA02:121), for a new residence on the W ½ of Lot 7, is revoked per this approval and cannot be utilized.
- 4.) A Certified Survey Map must be reviewed and approved by the Town of Merton and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the petitioners request, with the recommended conditions, will enhance the general desirability of the neighborhood, reduce negative impacts to the natural resources in the area, and will better promote the spirit and intent of the Ordinance than the 2002 Board of Adjustment approval (BA02:121), which approved a residence on the W ½ of Lot 7, which did not meet the offset or floor area ratio requirements. Allowing the relocated lot line will allow two residences, which will conform to all requirements, rather than allowing two residences, one of which will be non-conforming for its lifetime and one of which would be conforming. The lot line relocation will create two lots that are nearly equal in size and width and which conform

to the lot sizes in the surrounding area, rather than two lots that are not proportionate to one another or to the surrounding lots in the area. **It shall be noted, that our Department and the adopted Ordinance does not condone the separate sale and development of two adjacent non-conforming lots under the same ownership, however, because of the Ebner Case in 1989, we are unable to enforce the related provision of the Ordinance.** Approving the proposed variance does not set a precedent for future cases. In fact, the Waukesha County Corporation Counsel does not agree with allowing land divisions, which would increase and perpetuate the non-conformance of a lot. However, since a variance has already been approved on the W ½ of Lot 7 for a residence to be located too close to the side lot lines and to exceed the

floor area ratio requirements, the current proposal would more effectively promote the spirit and intent of the Ordinance, since it would allow the construction of a residence on each lot, which would not require any additional variances.

OTHER ITEMS REQUIRING BOARD ACTION:

BA03:064 DANIEL WILLEMS

Withdrawn.

BA02:116 JOHN SCHMEHIL

Mr. Tarmann

I move to reconsider the petitioner's request.

The motion was seconded by Ms. Voelker and carried with 4 yes votes. Mr. Schultz abstained.

Mr. Tarmann

I make a motion to approve the proposed modifications to the November 13, 2002 approval, as stated in the Staff Memorandum, for the reasons stated in the Staff Memorandum.

The motion was seconded by Mr. Bartholomew and carried with 4 yes votes. Mr. Schultz abstained.

The staff recommended approval of the modifications to the original conditions for approval for the following reasons:

Our Department recommends that the Board amend Condition No. 2 and 5 to allow a basement and to consider the proposed lower level a “basement”, excluding it from floor area ratio, since the new evidence provided by the owner illustrates a basement level, which does not violate the requirements of the Ordinance. In addition, the owner would like to replace the existing retaining walls on the property. Our Department would not object to the Board amending Condition No. 10 to read: “Existing retaining walls can be reconstructed in the same location as the existing walls, if deemed necessary to prevent erosion control by the Waukesha County Department of Parks and Land Use, without the necessity of applying for approvals from the Waukesha County Board of Adjustment. All other conditions of the original approval shall remain the same.”

ELECTION OF VICE-CHAIRPERSON

Ms. Voelker

I make a motion to nominate Mr. Bartholomew Vice-Chairperson of the Waukesha County Board of Adjustment. Bob has experience serving as temporary chairman in the past and tonight. He has an expansive knowledge of the Ordinance and has given his service as a member of the Board and he would provide a (?) continuity of this Board with the petitioners as well as staff at those times when Chairman Jim Ward is not available to be present.

The motion was seconded by Mr. Schultz and carried with 4 yes votes. Mr. Bartholomew abstained.

DISCUSSION AND POSSIBLE ACTION ON POLICY AND PROCEDURE FOR RE-CONSIDERING A PETITIONER'S REQUEST

--The following discussion is not transcribed verbatim--

Mr. Ward: Do we want to change our policy, or do we want to keep it the same? There is a comment here, who makes the decision, whether there is a substantial change or difference that would be brought to our attention. Under most circumstances the Chairperson makes the decision. What happens is that most of the time re-considerations in the past have been sent to Linda and to me. People ask to be put on old business for re-consideration. A memo was passed in June of 2001 regarding re-considerations and re-hearings.

Some ideas discussed by the Board:

Mr. Bartholomew: We could bring them back to the Chair or we could bring them back to the Board and do a quick review on the case. I believe Linda did that a few times.

Mr. Ward: Sometimes Linda would bring the case back to the Board before saying yes it can be reconsidered. Most of the times the Chairperson just made the decision. (Discussion regarding the Luebke case.) The ones that come back a long time after, a month to six months later when the measurements aren't the same or a survey has been done and it would fit into the policy, but the ones that come back a month later or two weeks later, it is because they don't like the decision, or they get a decision from Merton and Merton says one thing and we say another and they want to match them.

Mr. Tarmann: If there are errors, it should be included for possible reconsideration.

Ms. Voelker: I would like to continue to see the Chairperson continue to assume the responsibility to make the determination as to whether in fact the conditions are being met, that it's a substantial change or dimensions have changed or there was an error or communication misunderstanding in our original decision. I would like to see that be the Chairperson's responsibility.

Mr. Tarmann: I think maybe it should be part of the zoning Ordinance. It could define what could be reconsidered. The Ordinance could give the Board the discretion to make a decision, as long as it met the parameters in the Ordinance, and then it isn't a policy coming from us, but a policy that has gone through the County Board.

Ms. Voelker: That is a good point. It still allows the Chairperson to state that with discretion, if an applicant just doesn't like the decision, it can't be heard—per the Ordinance.

Mr. Ward: I think you should have some of these Administrative things written in the Ordinance.

Ms. Voelker: The staff's input would be desirable, but it should be the Chair's decision.

Mr. Tarmann: Why doesn't staff propose some language and bring it back here and let us review it and go back and forth a few times until it is resolved and then send it through for Ordinance amendments?

Ms. Barrows: Can someone apply for a new variance and pay a new fee with the same application

Ms. Voelker: No.

Mr. Tarmann: I think that was hashed out a long time ago.

Mr. Tarmann and Ms. Voelker: There might even be case law.

Ms. Voelker: Otherwise it becomes a continuous, how long can we keep coming back and it wears you down. If there is a change and the Chairperson feels there is a substantial change, we could look at it. We should stay with what we've got.

Mr. Tarmann: It should be looked into whether there is a law on this that we are not aware of. Don't just have staff prepare something. Staff could prepare something and have Corp. Counsel look at it and then bring it back here.

ADJOURNMENT:

Mr. Bartholomew

I move we adjourn this meeting at 10:20 p.m.

The motion was seconded by Ms. Voelker and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment